HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.1406 OF 2001

Between:

Gutta Satyanarayana

. . .Petitioner

AND

The Sub Divisional Forest Officer,
Vijayawada and others

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri C.Gunaranjan
for Shri C.Kodanda Ram

Counsel for the respondents : Assistant Government Pleader for
Forests

Dated: 25th July, 2007

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This is a petition for quashing order dated 29.11.2000 passed by District Judge, Krishna at Machilipatnam, whereby he dismissed the appeal preferred by the petitioner under Section 44 (2)(E) of the Andhra Pradesh Forest Act, 1967 (for short, 'the Act') against order dated 29.11.1993 passed by Authorised Officer-cum-Divisional Forest Officer, Eluru (for short, 'the Divisional Forest Officer') for confiscation of vehicle (lorry) bearing registration No.AP-16/U-5253 together with Red Sanders Wood weighing

6.682 Tons.

The Facts:

On receipt of information that Red Sanders Wood was being smuggled from the forest near Sub-Divisional Forest Officer, Vijayawada and Forest Range Officer, Vijayawada conducted a raid in the area of J.D. Nagar, Patamata, Vijayawada on 3.10.1993 (AN). They found the vehicle in question parked near the house of the petitioner with tarpaulin over it. On inspection, the vehicle was found loaded with 91 gunny bags of Red Sanders timber logs, which did not bear an authenticated marking. On being asked by the raiding party, the driver of the lorry, Sri G. Sambasiva Rao, who is none else than the brother of the petitioner, could not produce any valid permit for the possession or transportation of Red Sanders Wood. Therefore, Sri D.V. Nageswara Rao, Forest Range Officer, Vijayawada prepared a panchanama and seized the vehicle along with the forest produce and arrested Sri G. Sambasiva Rao, who was, later on, released on

personal bond with two sureties and the vehicle was brought to the Range Office at Vijayawada. On 4.10.1993, the bags containing Red Sanders Wood were weighed (the total weight was 6.862 Tons) and a fresh panchanama was drawn. Sri G. Sambasiva Rao gave a statement wherein he admitted that the Red Sanders Wood had been loaded in the vehicle without any valid permit. Thereafter, notice dated 11.10.1993 was issued to the petitioner and his brother under Section 44 (2)(A) and (2)(B) of the Act requiring them to show cause why the vehicle and Red Sanders Wood may not be confiscated. The petitioner filed reply dated 15.10.1993 to explain his position. He claimed that he had gone to Hyderabad on 2.10.1993 to see his ailing son-in-law; that while he was at Hyderabad, one T.S. Sankara Rao, Commission Agent of Assam Road Lines, approached his brother, Sri G. Sambasiva Rao and asked him to transfer the load of medicinal wood, which was brought by ABC Transport Company from Madras in vehicle bearing registration No.AP-03/T-5767, to his vehicle for being transported to Assam and promised to furnish papers necessary for transporting the load; that keeping in view the reputation of T.S. Sankara Rao, his brother G. Sambasiva Rao agreed to transport the load to Gauhati subject to furnishing of transport permits, way bills and hire charges; that in the meanwhile, the officers of the Forest Department took possession of the vehicle and registered a case involving violation of Section 44 of the Act, and that on 5.11.1993, he contacted the officers of the Forest Department and gave a statement about his innocence. The relevant portion of the petitioner's reply is reproduced below:

> "It is respectfully submitted that:
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> 1) the undersigned is not the owner of the timber/red sanders timber;
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> 2) that it is not loaded with the knowledge or consent or

connivance of the undersigned, or his agents or driver;

3) that it is only on the representation made that a reputed transport company brought the stock and;

4) that the documents required for transportation of the load would be given, the stock was permitted to be loaded;

5) that the red sanders wood is not imported by the undersigned;

6) that the undersigned has no intention at any time to export or move red sanders wood without appropriate documents required for transportation of the same.

Under the aforesaid circumstances, the undersigned begs to submit that he has absolutely no objection whatsoever if the timber loaded into the vehicle is confiscated.

It is submitted that in so far as the vehicle bearing No.AP-16/U-5253 is concerned, the undersigned is the owner of it. With great difficulty, and with huge finance obtained from TVS Sundaram Finance Limited, as well as the financiers from outside, the said lorry is purchased, about a month ago. The hire for transportation of the load referred to above is Rs.15,700/-, which includes the charges and expenses during the onward journey to Gowhati, which is at a distance of 2,400 kms. from Vijayawada, as is evident from the commission slip given by the Assam Road Lines, to the driver of the lorry, which was handed over to the A.B.C. India Limited, upon which the lorry of the undersigned was loaded. That being the case, when the fare of transport charges that are promised to be given for transportation of the red sanders wood is on par with the fare that is being paid for transportation of any other commodity, the undersigned or the driver of the undersigned would never take the risk of facing the consequences, had there been knowledge that the stock/load required to be transported is prohibited under the provisions of law.

Thus, it is evident that either the undersigned or his driver have no knowledge of the contents of the load and it is only on the firm belief and good faith that a reputed transport company is arranging the transaction, with material papers for transportation of the load, the driver of the lorry permitted the lorry to be loaded."

After considering the reply of petitioner No.1, the Divisional Forest Officer passed order dated 29.11.1993 whereby he confiscated the goods and the vehicle. In his detailed order, the Divisional Forest Officer formulated the following points:

"1. Whether there was any forest offence? If so, who were the offenders?

2. Whether the vehicle together with the produce seized were used in commission of the said offence?

3. Whether, a notice informing the grounds for proposed confiscation of the seizure was issued with reasonable opportunity for making representation or being heard in the matter to the person from whom the seizure was made?

4. Whether there is any evidence to prove the innocence of the owner, his agent or the person incharge of the vehicle in the committal of offence and that each one of them had taken reasonable precautions against the misuse of the said vehicle?

5. Has the grounds submitted by the owner of the vehicle been considered while passing the present judgment?

7. Is the proposed confiscation commensurate with the nature of the offence?"

The Divisional Forest Officer then referred to the assertion contained in the reply of the petitioner that he had no objection to the confiscation of the Red Sanders Wood and held that this was sufficient to prove that the lorry owned by him was loaded with Red Sanders Wood without any permit and the same constituted a forest offence punishable under Section 29(2)(b) of the Act.

The Divisional Forest Officer then considered the question whether the vehicle together with the forest produce were used in the commission of the offence and held:

"As discussed above, the Sub-Divisional Forest Officer, Vijayawada (RW1) and the Forest Range Officer, Vijayawada (RW2) have detected the smuggled Red Sanders loaded in the vehicle AP 16 U 5253 in 91 gunny bags weighed 6.862 M.Tons, valued @ Rs.6.862 lakhs which bears no hammer marks, no Government origin mark, no transit permit or any authenticity. Thus, the vehicle and the produce seized were used in the commission of the offence booked by the P.W.1 and 2 U/S. 29(2)(b) of A.P. Forest Act 1967 and Rule 3 of A.P. Red Sanders and Red Sanders Wood Transit Rules, 1969, U/S. 44 of A.P. Forest Act 1967. The respondents admitted that their lorry AP 16 U 5253 was used in the commission of the said offence. But the respondents stated that they are not the owners of the consignment of Red Sanders seized by the Forest officers on 3.10.1993.

Point 2 is answered accordingly."

On the third point formulated by him, the Divisional Forest Officer noted that notice had been served on the owner and the driver and they were given opportunity of hearing on various dates i.e. 15.10.1993, 28.10.1993, 6.11.1993, 15.11.1993, 20.11.1993 and 27.11.1993. On the issue of the petitioner's innocence, the Divisional Forest Officer again adverted to the factual matrix and observed:

"From the record of enquiry and proceedings, it is evident from the statement of the lorry owner that the lorry involved in this case i.e. AP 16 U 5253 was purchased by him just 3 months back and he had transported one consignment that too similar load i.e. Red Sanders wood only and the second consignment ready to transport was seized by the forest officials i.e. also Red Sanders. According to the further statements of Sub-Divisional Forest Officer, Vijayawada and Forest Range Officer, Vijayawada, it is evident that the produce seized in the case is 6.862 tonnes i.e. of a normal lorry load. This lorry AP 16 U 5253 seized is double capacity lorry i.e. capable of carrying 14 to 16 tons. The R-2 i.e. lorry owner of lorry AP 16 U 5253 and driver are awaiting the arrival of another consignment of Red Sanders in the name of medicine wood to make full load of the lorry i.e. 14 to 16 tons within one or two days, that is the reason why the lorry though loaded with the consignment of 6.862 M.Tons load on 2.10.1993 is not moved from Vijayawada where they (P1, P2 and four other staff) got information and searched and booked the vehicle on 3.10.1993 A.N.

As per the request of the counsel, Sri T.S. Sankara Rao, Commission Agent who is quoted to be their defence witness was issued with a notice on 20.11.1993. But the efforts made by the Sub-Divisional Forest Officer to trace him out proved that the said individual indulged in illegal activities and with Rs.10.00 lakhs worth clothes recently and fled away. The Sub-Divisional Officer also reported that his enquiries with the Police revealed that the Police are searching for the individual who involved in number of criminal cases and this Red Sanders smuggling is one among such illegal activities. Therefore, it is proved beyond doubt that the owner of the lorry AP 16 U 5253 – G. Satyanarayana and driver G. Sambasiva Rao are with the connivance of notorious smuggler and involved wantonly in this smuggling of Red Sanders racket.

According to the own deposition of the lorry owner, he had purchased the vehicle i.e. lorry AP 16 U 5253 just 3 months back and engaged on hire for one trip transport of similar consignment from Vijayawada to Gowhati and

kept the vehicle idle. Again when the second consignment is loaded, the vehicle was seized by the forest officials. Thus, it is proved that he has purchased the new lorry for Rs.4.50 lakhs and spent 0.50 lakhs towards body building, was used only two times, that too two consignments of Red Sanders Wood without any proper documents. No lorry owner who purchases a vehicle with huge cost cannot keep the vehicle idle for such long periods of months together losing so much money on hire. Thus, it is proved beyond doubt that the lorry owner has purchased this lorry for smuggling Red Sanders only with the connivance of notorious smugglers and to earn huge amounts. The statement of the lorry owner that he was out of the city from 1.10.1993 to 5.10.1993 morning is also considered to be an afterthought for the above clear reasons.

When any long destination transport is accepted, the lorry owner or driver shall naturally verify the produce that is to be transported, the validity, legality of the documents issued or handed over by the person engaging the vehicle for such transport. In this instant case, neither the lorry owner nor the driver have verified the same and they are contending that they have belief on the commission agent who engaged the vehicle. The antecedents of the so called commission agent are proved to be connected with criminal activities and hence all the versions and points put-forth by those two respondents (who are own brothers) are also not acceptable under any count. Therefore, I hold that the owner of lorry AP 16 U 5253 or his driver of the vehicle have not taken any precautions against the misuse of the said vehicle." (underlining is mine)

The Divisional Forest Officer then considered the question whether the advocate for the petitioner had been afforded opportunity of hearing and examining the witnesses and answered the same in negative by recording the following reasons:

"The Advocate for counsel on one side has represented for adjournment from time to time to examine certain witnesses, supply of copies and to give further explanation etc., and on the other side he had approached the Hon'ble A.P. High Court for release of the vehicle on the plea that the case is adjourned by the Authorised Officer for his convenience. Thus, the advocate has acted on dual policy. The owner of the vehicle deposed before the Authorised Officer that he will produce T.S. Sanakara Rao as his defence witness but he failed to do so.

The counsel has pleaded for enquiry of Sri T.Siva Sankara Rao, the commission agent by the Authorised Officer quoting him as his defence witness. As a matter of fact, it is his client's responsibility to prove their

innocence in this case. But, knowing fully well that T.S. Sankara Rao is a smuggler, having involved in number of criminal cases, on the plea of his enquiry and examination is essential, he tried to delay the proceedings before the Authorised Officer. However, as per his request, the Authorised Officer has adjourned the case from time to time and also issued notices to the said T.S. Sankara Rao for attending enquiry on 27.11.1993. Since the individual was reported to have involved in smuggling of Rs.10.00 lakhs worth property and gone to underground, Police authorities are also searching for him in connection with some criminal cases. The R-1 and R-2 were given many adjournments as per the request of their counsel and opportunities were also given. In spite of all that, the counsel for respondents has again requested for further adjournment on 27.11.1993 to prolong the case and to escape from the clutches of justice. Thus, the objections of the Advocate for petitioners have been met with to the best possibility."

In the end, the Divisional Forest Officer considered whether the proposed confiscation was commensurate with the nature of the offence and held:

"The statements given by the lorry owner and driver amply reveal the planned enactment of this smuggling. R-1 was absent from the scene at the time of detection. The later deposition and written statements appear clearly to be a tutored one. He is an experienced transport operator in the field for the last 25-30 years. All his contentions that having good belief in the commission agent they never checked the material loaded in the lorry and the lorry is kept idle for long periods and material loaded on 2.10.1993 was waited up to 4.10.1993 for documents etc., are all speak to the bids of the respondents to escape from the clutches of justice. It is ridiculous to say that having engaged the vehicle for such a long distance from Vijayawada to Gowhati they have not verified the Red Sanders produce loaded, packed in gunny bags.

For the purpose of the proceedings before the Authorised Officer U/S. 44, the evidence made available is sufficient to come to a decision that all the accused wilfully made the attempt to smuggle the Red Sanders stitched in gunny bags and concealed in the name of medicine wood and all of them collectively and individually never thought of taking any precaution against the misuse of the vehicle. Having established the committal of offence by the R-1 and R-2, the question of inflicting the proposed punishment of confiscation of the vehicle together with the Red Sanders wood and other produce commensurate with the nature of the offence definitely needs an exposition of the facts and law.

The R-1 i.e. driver of the lorry has given willingness for compounding

the case. But the produce involved in this case is Red Sanders timber worth 6.862 lakhs and under the discretionary powers vested in Authorised Officer, I refuse to compound the same.

The Red Sanders is an endangered species and valuable wood available in natural forest of some places of Andhra Pradesh only. Nowhere in the World, it is reported growing in the forests. The Govt. of A.P. have framed separate set of laws to govern the possession and transportation of Red Sander Wood and Sandalwood; R1 and R2 made the violation of these regulations more stringent than those of governing the other forest produce. The intention of the legislature in empowering the Authorised Officer to confiscate the vehicle used in the offence speaks to their determination to curb this evil menace."

(underlining is mine)

The appeal preferred by the petitioner against the order of the Divisional Forest Officer was dismissed by the District Judge vide his judgment dated 29.11.2000. The learned District Judge formulated the following points for consideration:

"1. Whether there is a prima facie proof of commission of forest offence of violating Rule 3 of the Rules is made out?

2. Whether the lorry in question is shown to be used in that offence?

3. Whether the appellant No.1, admittedly the owner of the lorry, could prove his innocence in the matter of his lorry being used for this offence? and

4. Whether the impugned order calls for any interference?"

He then evaluated the facts and evidence brought on record and recorded his finding in the following words:

"**Point No.1**

……..The confiscated lorry in question came to contain red sanders load of more than 6 metric tons valued more than Rs.6 lakhs and it was found stationed near the house of the first appellant in Vijayawada with that load. It is abundantly clear that Sambasiva Rao, the second appellant is its driver and Satyanarayana, the first appellant is its owner. Neither of them possessed any permit contemplated by Rule 3 of the Rules to bring or move red sanders from its abode, namely the forest into Vijayawada city. It is first, therefore, necessary for us to examine whether any forest offence occurred or not and if so by whom. At this juncture, it is sufficient if the above question is answered tentatively or in other words, it is sufficient at this stage to evaluate whether any prima facie case of a forest offence was established

against the driver of the lorry in question or more precisely, the involvement of the lorry in the commission of the forest offence is made out. As a matter of fact, in this enquiry we are not concerned with the involvement of the lorry in question in a forest offence. What is the forest offence we are concerned with in this enquiry? It is one prohibited by Rule 3 of the Rules. Rule 3(1) of the said Rules reads as follows:

R.3 (1): No person shall import sandalwood, sandalwood chips, sandalwood powder or red-sanders wood, red-sanders wood powder into, or export sandalwood, sandalwood chips, sandalwood powder or red-sanders wood, red-sanders wood chips, red-sanders wood powder from, or move sandalwood or red-sanders wood within, any place in the whole of the State, unless such sandalwood or red-sanders wood is accompanied by a permit prescribed in Rule 4.

The above Rule postulates red sanders should not be moved away from the forest which is obviously its abode into the plains or city without a permit prescribed by Rule 4 of the Rules. In this case, neither the driver of the lorry in question nor the owner of the lorry in question tendered any such permit justifying the situation of a load of red sanders in their lorry stationed in Vijayawada miles away from its abode, the thick forests elsewhere. The fact that their lorry came to hold a load of red sanders is absolutely beyond controversy. The red sanders could not have been found in their lorry at Vijayawada without its being moved all the way from the forest up to Vijayawada. So, the movement of red sanders without a permit into the lorry of the appellants is very much proved. Similarly, it is also well established that they totally failed to prove any permit justifying that movement of red sanders into their lorry from a far off forest. This scenario is sufficient to establish that a forest offence did occur.

Point No.2:-

.....It is very apparent on the face of the record that a contraband load of red sanders was very much found lying in the lorry in question. This is also an admitted fact. Both the driver and owner in their written statements admitted the fact of discovery of red sanders in the lorry in question though they tried their best to justify it resting their theme upon their innocence or they being misled into holding that contraband by someone else. It is a matter of common knowledge that ignorance of law is not an excuse. That red sanders cannot be held by any person without the proper permit is the law of the land. They cannot plead ignorance of the law of land. Nevertheless, the law permits a limited scope for pleading innocence as a defence against the seizure of the property. That aspect is embodied in sub-section (2-C) of Section 44 of the A.P. Forest Act, 1967. Before that, it is profitable to dilate more upon the erroneous thinking that in order to seize a lorry it should be found running. Certainly if we see the

provisions of Section 44(1)(2-A) and (2-B), it is nowhere said that the lorry should be found running in order to attract the liability entailing in seizure. Thus the entire Sec.44 of the A.P. Forest Act, 1967 is relevant for the purposes of this discussion and is therefore extracted hereunder:

44. Seizure of property liable to confiscation and procedure thereupon:-

(1) Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence, may be seized by any forest officer or police officer.

(2) Every officer seizing any property under this section shall place on such property or the receptacle, if any, in which it is contained, a mark indicating that the same has been so seized and shall, except where the offender agrees in writing forthwith to get the offence compounded (without any unreasonable delay either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorized by the Government in this behalf by notification (hereinafter referred to as the authorized officer) or make a report of such seizure to the Magistrate:)

Provided that where the timber or forest produce with respect to which such offence is believed to have been committed is the property of the Central or State Government and the offender is not known, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to the Divisional Forest Officer.

(2-A) Where an authorised officer seizes under sub section (1) any timber or forest produce or where any such timber or forest produce is produced before him under sub section (2) and he is satisfied that a forest offence has been committed, in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.

(2-B) No order confiscating any property shall be made under sub section (2-A) unless the person from whom the property is seized is given.

(a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and

(c) a reasonable opportunity of being heard in the matter.

(2-C) Without prejudice to the provisions of sub section (2-B), no order of confiscation under sub section (2-A) of any tool, rope, chain, boat or vehicle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope chain boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(2-D) Any forest officer not below the rank of a Conservator of Forests empowered by the Government within thirty days from the date of the order of confiscation by the authorized officer under sub-section (2-A) either suo motu or on application call for and examine the record of that order and make such inquiry or cause such inquiry to be made and pass such orders as he may think fit.

Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(2-E) Any person aggrieved by an order passed under sub-section (2-A) or sub-section (2-D) may within thirty days from the date of communication to him of such order, appeal to the District Court having jurisdiction over the area in which the property has been seized, and the District Court shall after giving an opportunity to the parties to be heard, pass such order as it may think fit and the order of the District Court so passed shall be final.

(3) Any forest officer not below the rank of a Forester, who or whose subordinate has seized any tools, ropes, chains, boats, vehicles or cattle under sub-section (1) and where he makes a report of such seizure to the Magistrate under sub-section (2) may release the same on the execution by the owner thereof a bond for the production of the property so released if and when so required before the Magistrate.

(4) Upon the receipt of any report under sub-section (2), the Magistrate shall except where the offence is compounded, take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

(5) The property seized under this section shall be kept in the custody of the forest officer not below the rank of a Forest Guard or the village headman until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal is received.

It is crystal clear that what this Section prohibited was the use

of the vehicle in committing the offence. Here, the offence is moving red sanders timber away from the forest without permit. The red sanders that came to be seized by the Forest officials was the fruit of such movement. At the end it was found in the lorry. Therefore, the lorry operated as a receptacle of contraband if not a transport vehicle. A receptacle is as much a tool as a tool could be for any other …….So what renders a vehicle liable for seizure is merely its use. Here the vehicle to say the least came to be used to contain contraband of red sanders severed from the forest and brought into the plains without permit. So it is not necessary that the vehicle should be found running with the load of red sanders in order to attract the liability for seizure.

Point No.3:- The first appellant, however, tried to extricate himself from this tangle by resorting to the theory of his innocence. But his own statement gives a lie to that theory of his innocence. In his cross-examination by Authorised Officer at page-3, the owner of the vehicle, Satyanarayana blurted out as follows:

"…….It is a fact that my lorry transported some material such type through A.B.C. Company which is a reputed Company. So far one consignment was sent by this lorry and this is the second consignment caught by the Forest Department."

The above revelations by the first appellant clearly show that he was in the habit of allowing the transport of red sanders in this lorry. When such is the case it can never lie in his mouth to say that he was innocent of the nature of the consignment or the nature of the load and that the present load came to be kept in his lorry without his knowledge.

Point No.4:- Thus, viewing from all angles, I firmly believe that the order of the Authorised Officer is faultless and this appears to be a big racket and the decision taken by the Authorised Officer is very much in keeping with the object of the Act which is to stamp out the smuggling of the forest wealth much to the detriment of the society at large. Thus, I do not see any merits in the appeal."

The petitioner has questioned the appellate order mainly on the ground that the learned District Judge ignored the gross violation of the procedure prescribed under Section 44 of the Act and the rules of natural justice committed by the Divisional Forest Officer. In paragraph 4 of his affidavit, the petitioner has averred that even though he had applied for copies of eleven documents, only five were made available

and the copies of important documents i.e. the enquiry record, second panchanama, the statement given by him i.e. the petitioner, copies of the documents seized from T.S. Sankara Rao and broker slip given by ABC Transport Company were not furnished to him. He has further pleaded that application made by the advocate for adjournment on the ground of his own marriage on 24.11.1993 was not entertained by the Divisional Forest Officer, who arbitrarily passed order dated 29.11.1993 for confiscation of the vehicle and the Red Sanders Wood. On merits, the petitioner has averred that there was no transportation of forest produce and, therefore, the Divisional Forest Officer did not have the jurisdiction to take action under Section 44 of the Act read with Rule 3 of the Andhra Pradesh Sandalwood and Red Sanders Wood Transit Rules, 1969 (for short, 'the Transit Rules'). The petitioner has also complained that he was not given reasonable opportunity to produce witnesses in support of his plea of innocence and, on that account, his cause has been seriously prejudiced.

The stand taken by the respondents is that the order for confiscation of the vehicle and Red Sanders Wood was passed because the writ petitioner committed forest offence involving violation of Rule 3 of the Transit Rules. In the affidavit filed by Shri A. Sri Rama Murthy, Forest Range Officer, Vijayawada, reference has been made to Rule 3 (1) of the Transit Rules and it has been averred that action was taken for seizure and confiscation of the vehicle and Red Sanders Wood because the timber logs (weighing 6.682 Tons) seized on 3.11.2003 were not accompanied by a permit prescribed under Rule 4. According to Shri Murthy, the Divisional Forest Officer ordered confiscation of the vehicle and Red Sanders Wood because neither the owner nor the driver could produce transit permit. Shri Murthy has then averred that transportation of the

medicinal wood from Madras to Vijayawada without any obstruction cannot lead to an inference that the petitioner did not commit offence as defined under Section 2 (e) of the Act.

Shri C. Gunaranjan, learned counsel for the petitioner argued that order dated 29.11.1993 passed by the Divisional Forest Officer is liable to be treated as nullity and the appellate order is liable to be quashed on the ground of violation of the rules of natural justice because the petitioner was not given reasonable opportunity to defend himself against the accusation of committing offence under the Act. Learned counsel referred to the averments contained in paragraph 6 of the affidavit of the petitioner to show that he was not supplied copies of the relevant documents and was not given opportunity to examine Shri T.S. Sankara Rao and argued that this should be treated as sufficient for recording a finding that the order of confiscation was passed in gross violation of the rules of natural justice. Learned counsel assailed the appellate order by arguing that the learned District Judge did not consider the most important point that the petitioner has not committed any offence involving violation of the provisions of the Act and the Transit Rules. Shri Gunaranjan submitted that the failure of the department to examine the most important witness, namely, Shri T.S. Sankara Rao, should have been treated by the learned District Judge sufficient for nullifying the order of confiscation and, in any case, the petitioner's assertion that he did not know about loading of Red Sanders Wood in the lorry should have been treated conclusive of his innocence.

The learned Assistant Government Pleader supported the order of confiscation as also the appellate order and argued that the petitioner cannot raise the plea of violation of the rules of natural justice because he had been given opportunity to submit explanation

and produce evidence to prove his innocence. Learned counsel emphasised that the possession of Red Sanders Wood without valid permit constituted a 'forest offence' within the meaning of Section 2 (e) of the Act and argued that the Divisional Forest Officer did not commit any illegality by ordering confiscation of the vehicle and Red Sanders Wood because the petitioner and his brother failed to produce permit authorising possession and transportation of the forest produce. Learned Assistant Government Pleader pointed out that the Red Sanders Wood was found in the lorry parked at a far distant place from the forest and as the petitioner failed to prove transportation thereof by some other person, the Divisional Forest Officer rightly held him guilty of committing forest offence within the meaning of Section 2 (e) read with Section 29(2) of the Act and Rule 3 of the Transit Rules. He then argued that the petitioner cannot take advantage of the non-examination of Shri T.S. Sankara Rao by the department because it was he who had introduced that person in the explanation dated 15.10.1993 by describing him as a reputed Commission Agent of Assam Road Lines. He further submitted that the burden to examine T.S. Sankara Rao squarely lay on the petitioner and his failure to do so establishes the falsehood of story set up by him. Learned Assistant Government Pleader lastly argued that the reasons assigned by the Divisional Forest Officer for holding the petitioner guilty of committing forest offence are amply supported by the documents brought on record and the learned District Judge did not commit any error by refusing to interfere with the order of confiscation because the petitioner had used the new vehicle only on two occasions for transportation/attempted transportation of Red Sanders Wood from Vijayawada to Gauhati without valid permit and the so-called commission agent had absconded.

I have given serious thought to the entire matter. In my opinion, there is no merit in the petitioner's challenge to the order of the District Judge and the writ petition is liable to be dismissed.

A reading of the provisions which have been extracted in the orders passed by the Divisional Forest Officer and District Judge, Krishna at Machilipatnam makes it clear that Rule 3 (1) of the Transit Rules imposes a complete embargo on the import and export of sandalwood, sandalwood chips, sandalwood powder or red-sanders wood, red-sanders wood powder into any place in the State unless such goods are accompanied by a permit prescribed under Rule 4. Sub-rule (2) of Rule 3 contains another prohibition. It lays down that no piece of the wood and other materials specified in sub-rule (1) or bags containing saw dust or chips of such wood shall be transported unless the same bear an authorized marking or seal of the government as prescribed under Rule 7. The term 'forest offence' has been defined in Section 2 (e) to mean 'an offence punishable under the Act or any rule made therein'. Section 44 provides for seizure of property liable to confiscation and lays down the procedure for effecting seizure. Section 44 (1) empowers the Forest Officer or Police Officer to seize timber or forest produce together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence. Sub-section (2-A) empowers the Authorised Officer to confiscate timber or forest produce with all tools, ropes, chains, boats and vehicles used in committing such offence. Sub-section (2-B), which is couched in negative form, mandates giving of a notice in writing to the person from whom the property is seized that the same is likely to be confiscated. Such notice must set-forth the grounds on which confiscation of the property is proposed. The person concerned is required to be given an opportunity to make written representation and a reasonable

opportunity of being heard. Sub-section (2-C) lays down that an order of confiscation of any tool, rope, chain, boat shall not be made if the owner thereof proves to the satisfaction of the Authorised Officer that it was used in carrying property without his knowledge or connivance of his agent etc. in committing the offence and that each of them had taken all reasonable and necessary precautions against such use. In **Sub-Divisional Forest Officer, Chennur v. Vijay B. Gulati**[1], a Full Bench of this Court interpreted Section 44(2-C) and held:

"The words referable to the owner of the vehicle and the word 'or' used therein are all disjunctive and cannot be read in conjunction. They do not connote that all of them have to collectively prove their innocence with regard to want of knowledge or consent of commission of forest offence. The words ". . . . . that each of them have taken all reasonable and necessary precautions against such use" cannot be understood to mean that all of them have to prove their want of knowledge or innocence collectively, but (not) individually in any manner indicated above. If the driver accompanying the vehicle proves his innocence, question of referring the matter to either the owner or his agent docs not arise at all. For criminal offence, anyhow the person in-charge of the vehicle will be proceeded against, but in so far as civil consequences are concerned, it is the owner who loses the property and if the commission of forest offence had taken place without his knowledge or consent and if he had no role to play in the said offence, then it would highly be unreasonable to punish him by confiscation of his vehicle, which would be arbitrary violating Article 14 of the Constitution of India and also will be an unreasonable restriction of his fundamental right guaranteed under Article 19 (1) (g) of the Constitution and ultimately it may breach the constitutional guarantee under Article 300-A. Authority of law does not mean enactment of law providing for confiscation, but such enactment should conform to the fundamental rights guaranteed in Part III of the Constitution of India as also the constitutional guarantee under Article 300-A. May be contextually the word 'or' may have to be read as 'and' and sometimes the word 'and' may have to be read 'or'. 'but the above legal provision involved for interpretation in the instant case can be given a plain meaning understanding 'or' as 'or' only and fastening liability of proving innocence on the owner, agent and driver not collectively but individually and even if there is a failure of proving innocence on the part of the driver or agent and if the owner proves innocence, his vehicle cannot be confiscated. It is sufficient if the owner proves that at the time when the vehicle was entrusted to his

agent or driver, if he was not accompanying, to see that all legal formalities for the transportation of the vehicle were complied with and he had entrusted the transportation to the agent or driver by taking all reasonable precautions and once such steps have been taken by the owner, his responsibility and liability ceases and when vehicle leaves his control and is in the control of the agent or the driver and if the said agent or driver commits any offence like the one in the instant case, then such owner cannot be made liable for confiscation of his vehicle. Confiscation of a vehicle which is used for unlawful purposes in normal course can be ordered only if the owner connived or had the knowledge of the unlawful use of the vehicle or that his agent did only such things as the owner desired and thus agent's culpability was shared by the owner and in the case of the servant namely the driver in particular only when it is shown that he was carrying out the desires of the owner."

If the petitioner's case is scrutinised in the light of the proposition laid down in the aforementioned decision, it is not possible to find any fault with the orders passed by the Divisional Forest Officer and the learned District Judge, who concurrently rejected the theory of innocence and lack of knowledge put forward by the petitioner. A recapitulation of the facts, which are borne out from the record of the case and which have not been disputed by the petitioner shows that,

1) the petitioner had purchased new vehicle (lorry) in 1993 by spending a sum of Rs.5 lakhs;
2) after purchase, the lorry was used only once for transportation of Red Sanders Wood;
3) the second consignment was also of Red Sanders Wood, which was seized by the officers of the Forest Department.

The petitioner's brother candidly admitted loading of Red Sanders Wood without relevant documents. Neither the petitioner nor his brother obtained permit for possession or transportation of Red Sanders Wood, which is available at a far distant place from Vijayawada. The so-called commission agent, namely, Shri T.S.

Sankara Rao involved in many criminal cases including smuggling of Red Sanders Wood and he had absconded.

In the backdrop of these facts, the concurrent finding recorded by the Divisional Forest Officer and the learned District Judge, which are supported by cogent reasons that the lorry had been used for illegal transportation of Red Sanders Wood, cannot be interfered under Article 226 of the Constitution of India.

The petitioner's plea of innocence and lack of knowledge is liable to be rejected in view of the unequivocal statement made by his brother that everything was done by him with the knowledge of the former. In any case, I do not find any valid ground to upset the view taken by the learned District Judge that the theory of innocence projected by the petitioner was untenable.

The argument of Shri Gunaranjan that the impugned order is liable to be quashed on the ground of violation of the rules of natural justice committed by the Divisional Forest Officer sounds attractive, but does not merit acceptance because the petitioner has failed to prove that the non-supply of copies of some documents has prejudiced his cause.

In early 60's and 70's, the Superior Courts had treated violation of the rules of natural justice as sufficient for invalidating administrative and quasi-judicial actions and orders without requiring the petitioner to plead and prove that his cause had been prejudiced on account of such violation. The theory of empty/useless formality was discarded on the premises that violation of the rules of natural justice is itself a prejudice. This trend has decisively changed in the recent years and, as of now, it is settled law that violation of the rules of natural justice is not sufficient to invalidate the quasi-judicial and administrative orders unless the petitioner pleads and prima facie shows that his cause has

been prejudiced. In this connection, reference can appropriately be made to the judgments of the Supreme Court in **Janki Nath Sarangi Vs. State of Orissa**[2], **R.C.Sharma Vs. Union of India**[3], **Sunil Kumar Banerjee Vs. State of West Bengal**[4], **K.N. Tripathi Vs. State Bank of India**[5], **Mumtaz Hussein Ansari Vs. State of U.P.**[6], **Kashinath Dikshita Vs. Union of India**[7], **Chandrama Tiwari Vs. Union of India**[8], **Managing Director, ECIL Vs. B. Karunakar**[9], **Krishanlal Vs. State of Jammu and Kashmir**[10], **State Bank of Patiala Vs. S.K. Sharma**[11], **S.K. Singh Vs. Central Bank of India**[12], **State of Uttar Pradesh Vs. Shatrughanlal**[13], **Food Corporation of India Vs. Padamkumar Bhuvan**[14], **State of Uttar Pradesh Vs. Harendra Arora**[15], **Oriental Insurance Company Vs. S. Balakrishnan**[16], **State of Uttar Pradesh Vs. Rameshchand Manglik**[17]; **Canara Bank Vs. Debasis Das**[18], **Indra Bhanu Gaur Vs. Committee, Management of M.M Degree College**[19], **Divisional Manager, Plantation Division A and N Islands Vs. Munnu Barrick**[20], **Karnataka State Road Transport Corporation v. S.G. Kotturappa**[21], **Punjab National Bank v. Manjeet Singh**[22], **P.D. Agrawal v. State Bank of India**[23] and Civil Appeal No.4761 of 2006 – **Ashok Kumar Sonkar v. Union of India** decided on February 23, 2007.

In **B. Karunakar's** case (supra) the Constitution Bench considered the apparent conflict of views expressed by different

Benches of the Supreme Court in **Union of India v. Mohd. Ramzan Khan**[24] and **K.C. Asthana v. State of Uttar Pradesh**[25] on the interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). The main question considered by the Constitution Bench was whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. Their Lordships of the Supreme Court also considered the following ancillary/incidental questions:

(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in Ramzan Khan's case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question,

viz. What was the law prevailing prior to 20th November, 1990?

After answering the main question in affirmative, the Supreme Court considered the ancillary questions and answered question No.5 in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Constitution Bench then held:

> "Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was

prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

In **Harendra Arora's case** (supra), the Supreme Court referred to the earlier judgment of the Constitution Bench in **B. Karunakar** (supra) and laid down the following propositions:

i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.

ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and

in such cases objections on this score have to be judged on the touch stone of prejudice.

(iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur v. Committee, Management of M.M. Degree College** (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

> "It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings."

In **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick** (supra) the Supreme Court referred to the judgment of the Constitution Bench in **B. Karunakar**'s case (supra) and observed that the principles of natural justice cannot be put in a straight jacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the

principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to “useless formality theory, in a given case”.

In **Karnataka State Road Transport Corporation v. S.G. Kotturappa** (supra), the Supreme Court held:

> "The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given"

In **Punjab National Bank v. Manjeet Singh** (supra), the Supreme Court opined as under:

> “The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principle of natural justice."

In **P.D. Agarwal v. State Bank of India** (supra), the Supreme Court held that the principles of natural justice cannot be put in a straight jacket formula and then observed:

"Decision of this Court in **S.L. Kapoor vs. Jagmohan & Ors. [(1980) 4 SCC 379]**, whereupon Mr. Rao placed strong reliance to contend that non- observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in **State Bank of Patiala & Ors. vs. S.K. Sharma [(1996) 3 SCC 364]** and **Rajendra Singh vs. State of M.P. [(1996) 5 SCC 460]**, the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula."

In **Ashok Kumar Sonkar v. Union of India** (supra), the Supreme Court held that cancellation of the appellant's appointment on the post of Lecturer in Tridosa Vigyan, IMS, Banaras Hindu University cannot be invalidated on the ground of violation of the rules of natural justice because he did not possess the essential qualifications for appointment on the post and even if notice was given to him, he could not have convinced the competent authority that he was eligible to be appointed as Lecturer in the subject of Tridosa Vigyan. Their lordships of the Supreme Court referred to various judicial pronouncements on the subject and observed:

"A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard."

In view of the above discussion, I hold that order dated 29.11.1993 passed by the Divisional Forest Officer cannot be declared as vitiated due to violation of the rules of natural justice and the learned District Judge did not commit any error by declining the petitioner's prayer.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.1745 of 2001 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

25th July, 2007

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[1] 1997 (6) ALT 238 (F.B.)
[2] (1969) 3 SCC 392
[3] (1976) 3 SCC 574
[4] (1980) 3 SCC 304
[5] (1984) 1 SCC 43
[6] (1984) 3 SCC 295
[7] (1986) 3 SCC 229
[8] (1987) Suppl. SCC 518
[9] (1993) 4 SCC 727
[10] (1994) 4 SCC 422
[11] (1996) 3 SCC 364
[12] (1996) 6 SCC 415
[13] (1998) 6 SCC 651
[14] (1999) SCC (L&S) 620
[15] (2001) 6 SCC 392
[16] (2003) 11 SCC 734
[17] (2003) 3 SCC 443
[18] (2003) 4 SCC 557
[19] (2004) 1 SCC 281
[20] (2005) 2 SCC 237
[21] (2005) 3 SCC 409
[22] (2006) 8 SCC 647

[23] (2006) 8 SCC 776

[24] (1991) 1 SCC 588

[25] (1988) 3 SCC 600